American Laundry Machinery, Inc. and John Fithen and Larry Davis. Cases 9-CA-18014-1, and 9-CA-18014-2

September 8, 1982

## **ORDER**

## By Members Fanning, Jenkins, and ZIMMERMAN

On June 18, 1982, Administrative Law Judge William A. Gershuny issued an Order granting Respondent's motion for summary judgment of dismissal. Thereafter, pursuant to Section 102.271 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, the General Counsel and the Charging Parties filed requests for review of Administrative Law Judge Gershuny's Order. Respondent filed a brief in support of the Administrative Law Judge's Order dismissing complaint and also moved to dismiss requests for review on grounds of timeliness.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

After a careful consideration of the General Counsel's and the Charging Parties' requests for review, and Respondent's statement in opposition and motion to dismiss on grounds of timeliness,2 we have decided, for the reasons detailed below, to grant the requests for review and remand for a hearing on the merits.

The Administrative Law Judge's Order granting Respondent's motion for summary judgment to dismiss is grounded on (1) the Regional Director's investigation and administrative dismissal of prior unfair labor practice charges filed by Sheet Metal Workers International Association, Local No. 183 and an individual employee and (2) a non-Board settlement purporting to "settle, compromise and complete all matters pending between . . . American Laundry Machinery, Inc. and the Union."

As to (1), the Administrative Law Judge, citing Jefferson Chemical Company, Inc., 200 NLRB 992 (1972), concluded that "where a charge is investigated and disavowed by the Regional Director,"

1 Sec. 102.27 of the Rules and Regulations provides, in pertinent part, that where the Administrative Law Judge has dismissed a complaint in its entirety before filing a decision, any request for review "of such action must be filed within 10 days from the date of the order of the dismissRespondent cannot be subjected to later litigation on the same allegation. In regard to (2), the Administrative Law Judge relied on Cambridge Taxi Company, 260 NLRB 931 (1982), wherein the Board reaffirmed longstanding policy "that a settlement agreement disposes of all issues involving presettlement conduct of the parties, unless prior violations of the Act were either unknown to the General Counsel and not readily discoverable by investigation, or specifically reserved from the settlement agreement by the mutual understanding of the parties."

The Administrative Law Judge erred in his application of Jefferson Chemical Company, supra, and Cambridge Taxi Company, supra, to the situation herein. In Jefferson Chemical, 3 both unfair labor practice charges involved had been fully adjudicated, and the record closed. In the instant case, although the earlier charges cover some of the same allegations, such charges were the subject of only an administrative investigation, and were not adjudicated. See, generally, West Texas Utilities Company, 85 NLRB 1396, enfd. 184 F.2d 233, 239 (D.C. Cir. 1950). Subject only to possible limitations imposed by Section 10(b) of the Act, nothing precludes the General Counsel from proceeding on timely filed charges even though prior charges involving the same issue have been administratively dismissed. See The Motor Convoy, Inc., 252 NLRB 1253, fn. 4 (1980); Delta Metals, Inc., 236 NLRB 1665 (1978).

The Administrative Law Judge's reliance on Cambridge Taxi Company is similarly misplaced.4 The settlement agreement involved in Cambridge Taxi was a Board settlement, which the General Counsel executed and which the General Counsel was responsible for policing. Effective administration and enforcement of the Act requires that a high percentage of labor disputes be settled, rather than litigated. Toward this end, the Board has a longstanding policy of encouraging parties to resolve their differences themselves, just as long as the resulting settlement agreement—either the Board or non-Board variety-provides a full remedy which adequately effectuates the policies of the Act. Settlement is not an end in itself, however, and when, as here, there is sharp disagreement among the parties as to what the non-Board settlement did or did not purport to include, we believe that the instant matter was not ripe for summary judgment and that the allegations in Cases 9-

<sup>&</sup>lt;sup>2</sup> As noted above, Respondent contends that the General Counsel's and the Charging Parties' requests for review are untimely. However, the Administrative Law Judge's Order was served on the parties by mail, so that, in accord with Sec. 102.114 of the Board's Rules and Regulations, 3 days are added to the "prescribed period" within which "a party has the right or is required to do some act . . . ." Since the General Counsel's and the Charging Parties' requests for review were deposited in the mail on June 28 and 30, respectively, the requests for review are timely filed.

<sup>&</sup>lt;sup>3</sup> Members Fanning and Jenkins dissented in Jefferson Chemical and do

not find it controlling.

4 Member Jenkins dissented in Cambridge Taxi and does not find it controlling.

CA-18014-1 and 9-CA-18014-2 raise issues best resolved through a formal hearing.<sup>5</sup> Accordingly,

It is hereby ordered that the General Counsel's and the Charging Parties' requests for review are

granted and that the Administrative Law Judge's Order granting summary judgment is vacated.

IT IS FURTHER ORDERED that the above-entitled proceeding be remanded to the Regional Director for Region 9 for further appropriate proceedings.

<sup>&</sup>lt;sup>8</sup> In addition to the fact that the purported settlement agreement did not involve the General Counsel, we note that the settlement was between Respondent and the Union, and not the Charging Parties herein.